

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID M. CATHCART, et al.,

No. C-09-5748 MMC

Plaintiffs,

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS; VACATING  
APRIL 16, 2010 HEARING**

v.

SARA LEE CORPORATION, et al.,

Defendants

Before the Court is the Motion to Dismiss, filed February 17, 2010 by defendants Sara Lee Corporation and Sara Lee Bakery Group. Plaintiffs David M. Cathcart, James H. Whitehead, Robert W. Decker, and Dale Baldisseri have filed opposition, to which defendants have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision thereon, VACATES the hearing scheduled for April 16, 2010, and rules as follows.

1. Contrary to defendants' argument, the First Claim for Relief, by which plaintiffs assert a state law claim for failure to pay wages, is not subject to dismissal. In particular, to the extent plaintiffs' claim is based on an assertion that defendants violated state law by failing to compensate plaintiffs at required overtime rates, either when such work was performed or upon termination, plaintiffs' failure to allege facts to support a finding that defendants have misclassified plaintiffs as "exempt[ ] from the requirement that an

overtime rate of compensation be paid pursuant to [the Labor Code],” see Eicher v. Advanced Business Integrators, Inc., 151 Cal. App. 4th 1363, 1371 (2007), is not a ground for dismissal. Rather, “[t]he assertion of an exemption from the overtime laws is considered to be an affirmative defense,” see Ramirez v. Yosemite Water Co., 20 Cal.4th 785, 794-95 (1999), and a plaintiff has no “obligation to anticipate [an affirmative] defense by stating in his complaint that the defendant [is not entitled to an affirmative defense],” see Gomez v. Toledo, 446 U.S. 635, 640 (1980). Further, to the extent the First Claim for Relief is based on plaintiffs’ assertion that defendants failed to pay plaintiffs the minimum wage, plaintiffs have not failed to allege sufficient facts to state a claim. The complaint alleges that plaintiffs were “made to work off-the-clock, causing them to be paid nothing at all for substantial amounts of work” (see Compl. ¶¶ 1, 22, 24); payment of “nothing at all” for work performed necessarily contemplates payment in an amount less than the minimum wage.<sup>1</sup>

2. As plaintiffs concede, the Second Claim for Relief, by which plaintiffs allege defendants failed to provide plaintiffs with meal periods, is subject to dismissal for the reason plaintiffs do not allege they worked the requisite number of hours that would entitle them to meal breaks. (See Pls.’ Opp. at 7:22-24.) Additionally, the Second Claim for Relief is subject to dismissal because, as defendants correctly argue, the complaint includes no facts to support plaintiffs’ pleaded conclusion that defendants “violated [the] obligation” to provide meal breaks. (See Compl. ¶ 32); see Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009) (holding courts “are not bound to accept as true a legal conclusion couched as a factual allegation”) (internal quotation and citation omitted).

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<sup>1</sup>In their motion, defendants assert that neither defendant is plaintiffs’ employer, but, rather, that the employer is “The Earthgrains Companies, Inc.” (See Defs.’ at 1:27-28.) In their opposition, plaintiffs assert that their respective wage statements identify the employer as “Sara Lee,” and further assert that “The Earthgrains Companies, Inc.” is not authorized to do business in California (see Pls.’ Opp. at 3:12 - 4:4), the state in which plaintiffs allege they are or were employed. Because the complaint alleges that each plaintiff was employed by the named defendants, the Court does not at this time consider any factual dispute that may exist as to the identity of plaintiffs’ employer(s) and/or any entity’s ability to do business in California.



1           3. If plaintiffs wish to file a First Amended Complaint, plaintiffs shall file their First  
2 Amended Complaint no later than April 30, 2010.

3           **IT IS SO ORDERED.**

4  
5 Dated: April 13, 2010

  
MAXINE M. CHESNEY  
United States District Judge